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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARDIn the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2
Independent Spent Fuel Storage Installation

Docket # 72-26

**SAN LUIS OBISPO MOTHERS FOR PEACE'S
RESPONSE TO NRC STAFF'S MOTION
FOR SUMMARY DISPOSITION OF CONTENTION 1(b)**

Pursuant to 10 C.F.R. § 2.710, CLI-08-05, __ NRC __ (March 27, 2008), and the Atomic Safety and Licensing Board's ("ASLB's") Scheduling and Case Management Order of April 4, 2008, San Luis Obispo Mothers for Peace ("SLOMFP") hereby responds to the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff's Motion for Summary Disposition of Contention 1(b) (April 18, 2008) ("Staff Motion"). As admitted by the Commission, Contention 1(b) challenges the Staff's failure to provide source documents or information underlying its analysis in the supplement to the environmental assessment for the proposed Diablo Canyon Independent Spent Fuel Storage Installation ("ISFSI"), and also challenges the Staff's failure to identify appropriate FOIA exemptions for its withholding decisions." CLI-08-01, __ NRC __ (2008), slip op. at 19.

SLOMFP believes that the Staff has now provided an adequate listing of the reference documents on which it relied for the draft and final supplements to its environmental assessment for the proposed Diablo Canyon ISFSI. Therefore SLOMFP considers that aspect of Contention 1(b) to be resolved.

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With respect to the question of whether the Staff has adequately explained the nature and extent of its reliance on the reference documents, the Staff has provided additional information in its Motion that is sufficient to resolve SLOMFP's outstanding questions. In particular, the Staff has confirmed its reliance on a key reference document – SECY-04-0222, Memorandum from Luis A. Reyes to the Commissioners re: Decision-making Framework for Materials and Research and Test Reactor Vulnerability Assessments (November 24, 2004) (“SECY-04-0222”) -- to exclude consideration of attack scenarios that did not result in immediate fatalities.¹

The Staff's affidavit confirms the assertion of Contention 2 that in evaluating the environmental impacts of an intentional attack on the proposed Diablo Canyon ISFSI, the NRC Staff screened out attacks that would not cause immediate fatalities, thereby excluding consideration of attack scenarios that could cause widespread land contamination, with significant adverse effects on human health, the environment, and the economy. The Staff's own statements therefore demonstrate that in making a finding of no significant impact and refusing to prepare an environmental impact statement (“EIS”), the Staff arbitrarily and irrationally refused to consider the significant adverse impacts that could be caused by an attack resulting in significant land contamination. Accordingly, the Staff has now satisfied SLOFMP's concerns with respect to this aspect of Contention 1(b).

¹ In paragraph 7 of the Affidavit of James Randall Hall, Shana Helton, and Paul Kelley, Jr. (April 18, 2008), affiant Shana Helton states that: “[t]he framework assessment methodology outlined in SECY-04-0222 was applied to various categories of NRC licensees and certificate holders, including ISFSIs.” In the same paragraph, Ms. Helton also states that while the Staff did not apply many aspects of the methodology outlined in SECY-04-022, the Staff “did refer to the consequence evaluation criteria in SECY-04-0222 (and its enclosures) when developing the set of assumptions used to calculate the estimated dose to the nearest resident to the Diablo Canyon ISFSI.”

Finally, without conceding that the Staff has fully complied with the Freedom of Information Act ("FOIA") in its decisions regarding the redaction of reference documents and its explanations for those redactions, SLOMFP does not seek additional public disclosure of information in the reference documents. As stated in SLOMFP's contentions and its Motion for Reconsideration of CLI-08-05 (April 7, 2008), SLOMFP continues to believe that as a general matter, under the Atomic Energy Act and its implementing regulations, the NRC was required to give SLOMFP access to the reference documents under a protective order, in order to allow SLOMFP an adequate opportunity for a hearing on the adequacy of the Staff's environmental analysis in support of the proposed licensing of the Diablo Canyon ISFSI.

Therefore, for the reasons stated above, SLOMFP does not oppose summary disposition of Contention 1(b) as admitted by the Commission. In addition, SLOMFP withdraws its April 10, 2008, Supplemental Discovery Requests Regarding Documents Produced by NRC Staff in Connection with Vaughn Index.

Respectfully submitted,



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April 26, 2008

CERTIFICATE OF SERVICE

I certify that on April 26, 2008, copies of San Luis Obispo Mothers for Peace's Response to NRC Staff's Motion for Summary Disposition of Contention 1(b) were served on the following persons by e-mail; and that they will be served on the following by first-class mail on April 28, 2008:

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